(*Chapter IIIA.—Probates, Letters of Administration and Certificates of Administration.—Section 19A.*)

[1]xxiv. [Petitions under the Indian Christian Marriage Act, 1872, sections 45 and 48.][2]

XV of 1872.

CHAPTER IIIA.[3]

PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION.

Relief where too high a court-fee has been paid.

19A. Where any person on applying for the probate of a will or letters of administration has estimated the property of the deceased to be of greater value than the same has afterwards proved to be, and has consequently paid too high a court-fee thereon, if, within six months after the true value of the property has been ascertained, such person produces the probate or letters to the Chief Controlling Revenue-authority [4][for the local area] in which the probate or letters has or have been granted,

and delivers to such Authority a particular inventory and valuation of the property of the deceased, verified by affidavit or affirmation,

and if such Authority is satisfied that a greater fee was paid on the probate or letters than the law required,

the said Authority may—

(*a*) cancel the stamp on the probate or letters if such stamp has not been already cancelled;

(*b*) substitute another stamp for denoting the court-fee which should have been paid thereon; and

(*c*) make

[1] This clause was substituted for the original clause by the Indian Christian Marriage Act, 1872 (15 of 1872), s. 2, Genl. Acts, Vol. II. The original clause was as follows:— "petitions under the 14th and 15th of Victoria, Ch. 40 (*an Act for marriages in India*), s. 5, or under Act No. 5 of 1852, s. 9."

[2] For further exceptions, *see* Notification No. 4650, dated 10th September, 1889, in Appendix attached.

[3] Chapter IIIA was inserted by the Probate and Administration Act, 1875 (13 of 1875), s. 6, Genl. Acts, Vol. II.

[4] Substituted for the words "of the Province." by s. 3 (*1*) of the Court-fees (Amendment) Act, 1901 (10 of 1901), Genl. Acts, Vol. V.

(*Chapter IIIA.—Probates, Letters of Administration and Certificates of Administration.—Sections 19B-19C.*)

(*c*) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.

Relief where debts due from a deceased person have been paid out of his estate.

19B. Whenever it is proved to the satisfaction of such Authority that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount or value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less court-fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act,

such Authority may return the difference, provided the same be claimed within three years after the date of such probate or letters.

But when, by reason of any legal proceeding, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said Authority may allow such further time for making the claim as may appear to be reasonable under the circumstances.

Relief in case of several grants.

19C. Whenever [1] * a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

Whenever such a grant has been or is made in respect of any property forming part of an estate, the

[1] The word "such" was repealed by the Repealing and Amending Act, 1891 (12 of 1891).

the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

Probates declared valid as to trust-property though not covered by court-fee.

19D. The probate of the will or the letters of administration of the effects of any person deceased heretofore or hereafter granted shall be deemed valid and available by his executors or administrators for recovering, transferring or assigning any moveable or immoveable property whereof or whereto the deceased was possessed or entitled, either wholly or partially as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a court-fee was paid on such probate or letters of administration.

Provision for case where too low a court-fee has been paid on probates, etc.

[1]19E. Where any person on applying for probate or letters of administration has estimated the estate of the deceased to be of less value than the same has afterwards proved to be, and has in consequence paid too low a court-fee thereon, the Chief Controlling Revenue-authority [2][for the local area] in which the probate or letters has or have been granted may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full court-fee which ought to have been originally paid thereon in respect of such value and of the further penalty, if the probate or letters is or are produced within one year from the date of the grant, of five times, or, if it or they is or are produced after one year from such date, of twenty times, such proper court-fee

[1] As to power of Chief Controlling Revenue-authority to remit the whole or part of any penalty or forfeiture payable under section 19E, *see* the Probate and Administration Act, 1889 (6 of 1889), s. 20 (2), Genl. Acts, Vol. IV.

[2] Substituted for the words "of the Province" by s. 3 (1) of the Court-fees (Amendment) Act, 1901 (10 of 1901), Genl. Acts, Vol. V.

court-fee, without any deduction of the court-fee originally paid on such probate or letters:

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a court-fee was at first paid on the probate or letters, and if the said Authority is satisfied that such fee was paid in consequence of a mistake or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper court-fee, the said Authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.

Administrator to give proper security before letters stamped under section 19E.

19F. In case of letters of administration on which too low a court-fee has been paid at first, the said Authority shall not cause the same to be duly stamped in manner aforesaid until the administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased had been then ascertained.

Executors, etc., not paying full court-fee on probates, etc., within six months after discovery of under-payment.

[1] **19G.** Where too low a court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters does not within six months [2]* * * * * after the discovery of the

[1] As to recovery of penalties or forfeitures under s. 19G, *see infra*, s. 19J.

[2] The words and figures "after the first day of April, 1875, or" were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

the mistake or of any effects not known at the time to have belonged to the deceased, apply to the said Authority and pay what is wanting to make up the court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees and also a further sum at the rate of ten rupees per cent. on the amount of the sum wanting to make up the proper court-fee.

Notice of applications for probate or letters of administration to be given to Revenue-authorities, and procedure thereon.

[1]**19H.** (*1*) Where an application for probate or letters of administration is made to any Court other than a High Court, the Court shall cause [2] notice of the application to be given to the Collector.

(*2*) Where such an application as aforesaid is made to a High Court, the High Court shall cause notice of the application to be given to the Chief Controlling Revenue-authority [3][for the local area in which the High Court is situated].

(*3*) The Collector within the local limits of whose revenue-jurisdiction the property of the deceased or any part thereof is, may at any time inspect or cause to be inspected, and take or cause to be taken copies of, the record of any case in which application for probate or letters of administration has been made; and if, on such inspection or otherwise, he is of opinion that the petitioner has under-estimated the value of the property of the deceased, the Collector may, if he thinks fit, require the attendance of the petitioner (either in person or by agent) and take evidence and inquire into the matter in such manner as he may think fit, and, if he is still of opinion that the value of the property has been under-estimated, may require the petitioner to amend the valuation.

(*4*) if

[1] Sections 19H, 19I, 19J & 19K were inserted by the Court-fees Amendment Act, 1899 (11 of 1899), s. 2, Genl. Acts, Vol. V.

[2] For form of notice under this clause prescribed by the Chief Court of Lower Burma, *see* Burma Gazette, 1902, Pt. IV, p. 625.

[3] Substituted for the words "of the Province" by s. 3 (2) of the Court-fees Amendment Act, 1901 (10 of 1901), Genl. Acts, Vol. V.

(*Chapter IIIA.—Probates, Letters of Administration and Certificates of Administration.—Section 19H.*)

(*4*) If the petitioner does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court before which the application for probate or letters of administration was made, to hold an inquiry into the true value of the property :

Provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the inventory required by section 277 of the [1] Indian Succession Act, 1865, or, as the case may be, by section 98 of [2]the Probate and Administration Act, 1881. X of 1865. V of 1881.

(*5*) The Court, when so moved as aforesaid, shall hold, or cause to be held, an inquiry accordingly, and shall record a finding as to the true value, as near as may be, at which the property of the deceased should have been estimated. The Collector shall be deemed to be a party to the inquiry.

(*6*) For the purposes of any such inquiry, the Court or person authorized by the Court to hold the inquiry may examine the petitioner for probate or letters of administration on oath (whether in person or by commission), and may take such further evidence as may be produced to prove the true value of the property. The person authorized as aforesaid to hold the inquiry shall return to the Court the evidence taken by him and report the result of the inquiry, and such report and the evidence so taken shall be evidence in the proceeding, and the Court may record a finding in accordance with the report, unless it is satisfied that it is erroneous.

(*7*) The finding of the Court recorded under sub-section (*5*) shall be final, but shall not bar the entertainment and disposal by the Chief Controlling Revenue-authority of any application under section 19 E.

(*8*) The

[1] Genl. Acts, Vol. I.
[2] Genl. Acts, Vol. III.

(*Chapter III A.—Probates, Letters of Administration and Certificates of Administration.—Sections 19I-19K.*)

(*8*) The Local Government may make rules for the guidance of Collectors in the exercise of the powers conferred by sub-section (*3*).

Payment of court-fees in respect of probates and letters of administration.

[1] **19I.** (*1*) No order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the form set forth in the third schedule, and the Court is satisfied that the fee mentioned in No. 11 of the first schedule has been paid on such valuation.

(*2*) The grant of probate or letters of administration shall not be delayed by reason of any motion made by the Collector under section 19H, sub-section (*4*).

Recovery of penalties, etc.

[1] **19J.** (*1*) Any excess fee found to be payable on an inquiry held under section 19H, sub-section (*6*), and any penalty or forfeiture under section 19G may, on the certificate of the Chief Controlling Revenue-authority, be recovered from the executor or administrator as if it were an arrear of land-revenue by any Collector in any part of British India.

(*2*) The Chief Controlling Revenue-authority may remit the whole or any part of any such penalty or forfeiture as aforesaid, or any part of any penalty under section 19E or of any court-fee under section 19E in excess of the full court-fee which ought to have been paid.

Sections 6 and 28 not to apply to probates or letters of administration.

[1] **19K.** Nothing in section 6 or section 28 shall apply to probates or letters of administration.

CHAPTER IV.

[1] *See* first footnote on p. 25, *supra*.